

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION	MDL No. 2545
This Document Relates to All Cases	Master Docket Case No. 1:14-cv-01748  Honorable Matthew F. Kennelly

**JOINT STATUS REPORT  
FOR JANUARY 13, 2015 CASE MANAGEMENT CONFERENCE**

The Court's December 8, 2014 case management conference and corresponding minute entry directed lead counsel for Plaintiffs and Defendants to file this joint report regarding the status of the parties' discussions, agreements and disagreements on the proposed agenda items for the January 13, 2015 case management conference. Since the last case management conference, the parties conferred and made progress toward agreement on the agenda items, as follows:

**I. MDL Product Liability Cases**

**A. *Argument on deposition protocol submissions:*** The parties expect to present the remaining disputed issues to the Court at the January 13, 2015 case management conference.

**B. *Party proposal(s) regarding Defendants' responses to remaining complaints as directed by the Court in the Order entered on December 23, 2014:*** Per the Court's direction, the parties have conferred on the possibility of filing amended complaints and additional motions to dismiss in light of the Court's ruling on Defendants' motion to dismiss. The parties have also conferred about the timing of responsive pleadings, along with the appropriateness of a Master Complaint and Answer. Plaintiffs need additional time to consider the concept of a Master

Complaint. The parties have also conferred on the timing of Plaintiff Fact Sheets for later filed cases, which is currently tied to the filing of an answer. The parties will continue to confer and anticipate submitting a proposed Case Management Order on these issues for the Court's consideration prior to the next case management conference.

**C. *Update on Plaintiff Fact Sheets:*** In accordance with CMO 9, the first batch of Plaintiff Fact Sheets were due December 29, 2014. Plaintiff Fact Sheets were submitted in many of the cases. In other cases, extensions were granted. And in other cases, no Plaintiff Fact Sheet was submitted. Defendants have begun the process of submitting warning letters for the cases in which they did not receive fact sheets and will begin shortly the process of submitting deficiency letters.

**D. *Status of Search Terms negotiations:*** Following the Court's instruction at the December 8 case management conference to try to reach an agreement on search terms in short order, the parties have recently made significant progress toward that end. The parties corresponded throughout December and AbbVie and the PSC held meet and confer sessions specifically to discuss search terms on January 7 and 9. As of the time of this Report, the parties are hopeful that further negotiation on this issue will be fruitful and are cautiously optimistic that an agreement can be reached in the near future.

**E. *Status of rolling document production:*** AbbVie, Auxilium, Eli Lilly, Pfizer, Actavis, and Endo Pharmaceuticals have completed their rolling productions of NDA/IND related regulatory materials.

The parties have differing views on the status of rolling document productions:

PSC: The PSC's view is that AbbVie has not complied with CMO 13 § III (B)(3), which pertains to the production of custodial files accompanied by a certificate of completeness,

because AbbVie did not produce by January 2, 2015 custodial files and certificates of completeness for 9 custodians identified by the PSC on November 18, 2014. The PSC also contends that AbbVie has failed to comply with CMO 13 § III (B)(2) by failing to make rolling document productions every 14 days commencing on November 14, 2014.

AbbVie: At the last status hearing, the Court noted that “[o]n the issue of document production and the search materials relating to AbbVie” that it would not be setting a “hard and fast deadline.” 12/8/14 Tr. at 86: 22-25. The parties are continuing to negotiate to reach consensus on the search terms to be used in this litigation. In the meantime, on November 14 and December 15, 2014, AbbVie produced nearly 500,000 pages of NDA/IND-related files.<sup>1</sup> And on December 12, 2014, AbbVie produced approximately 1.3 million pages of custodial files for five custodians requested by the Plaintiffs using search terms that were agreed to by the plaintiffs in another litigation and will be producing 18 more custodial files commencing on a rolling basis within 30 days and finishing in 90 days.

An in-person meet and confer on discovery issues is scheduled for January 12, 2015.

**F. *Discovery update regarding each individual defendant pursuant to CMOs 13, 14 and 19:***

Auxilium: PSC has propounded discovery and has an agreed to search terms so that the discovery responses will be forthcoming on the agreed-to schedule.

Lilly: PSC to propound master written discovery and initial 30(b)(6) deposition notices on or before January 23, 2015 per CMO 19. The timing for Lilly’s responses is likewise set forth in CMO 19.

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<sup>1</sup> To facilitate coordination, AbbVie also produced the same in its Illinois and Pennsylvania state court litigations.

Actavis: PSC to propound master written discovery and initial 30(b)(6) deposition notices on or before February 13, 2015 per CMO 19. The timing for Actavis' responses is likewise set forth in CMO 19.

Pfizer/Endo: PSC to propound master written discovery and initial 30(b)(6) deposition notices on or before March 20, 2015 per CMO 19. The timing for Pfizer's and Endo's responses are likewise set forth in CMO 19.

**G. *State/Federal coordination status:*** Pursuant CMO 17, the parties have conferred and they have begun maintaining a comprehensive and up-to-date list identifying all state court TRT cases, including the parties, attorneys, jurisdiction, judge and status. Defendants have pushed for identical or substantially similar orders in Cook County and Pennsylvania for orders such as the Plaintiff Fact Sheet, Protective Order, and an ESI protocol and have continued to apprise the judges in those cases of updates in the MDL. In addition, Defendants have been apprising Plaintiffs of the production of documents in the Cook County case, which will also be available in the MDL, and are coordinating with Mark Hoffman in Pennsylvania to achieve uniformity in search terms across the different cases. In the future, Defendants will continue to use their best efforts to coordinate discovery and case schedules in the MDL proceeding with discovery and case schedules in the state court cases. Plaintiffs' State-Federal Liaison Counsel intends to communicate with plaintiffs' counsel in the state court cases regarding the status, schedule, and developments in the MDL proceeding and in the various state court cases.

**H. *Discussion on scheduling order relating to non-core defendants:*** Some non-core defendants (*i.e.*, those other than Abbott and AbbVie and the five principal Non-AbbVie defendants) have been named in a few filed suits. Discussion has just recently begun on

scheduling issues related to these non-core defendants. The parties hope to have agreement on these issues for presentment to the court at the February 13, 2015 case management conference.

**II. Medical Mutual of Ohio RICO case**

The MDL PSC filed a Third Party Payor case against most, but not all, of the MDL Defendants based on the federal RICO statute. Some but not all of the Defendants have been served. A briefing schedule regarding the Defendants' Motion to Dismiss has been negotiated with the pertinent dates as follows:

March 15, 2015 – Defense brief due;

May 30, 2015 – Plaintiff response due; and

July 7, 2015 – Defense reply brief due.

Dated: January 9, 2015

Respectfully submitted,

/s/ Trent B. Miracle

Trent B. Miracle

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 9, 2015, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

/s/ Trent B. Miracle